



28 September 2022

Stavros Yallouridis
CEO
Motor Traders' Association of New South Wales
Sent via email: stavros.yallouridis@mtansw.com.au



IMMEDIATE ACTION REQUIRED:

You must take steps after your recent election E2021/203

Dear Stavros Yallouridis,

An election has recently been completed by the Australian Electoral Commission (**AEC**) for the Motor Traders' Association of New South Wales.

This letter explains the next steps you must take and what information you need to lodge with the Registered Organisations Commission (**ROC**).

What you must do right now

- Let your members know about the election report issued by the AEC
- Respond to the AEC

This letter explains these steps and the tools available to help you.

STEP 1: Notify members

You must put a notice on your website once you receive your post-election report. It must tell your members they can request a copy of the post-election report from you or the AEC (r. 141). The notice must be on your website for at least 3 months.



Can I put more information on our website?

Yes! Being transparent is part of good governance. You can publish the whole report or the declaration of results, as well as your notice and leave them up longer than 3 months. You can always do more than the regulatory minimum.

The ROC will also publish your declaration of results on our [website](https://www.roc.gov.au).

STEP 2: Reply to the AEC

The AEC's post election report says the AEC had trouble applying some of your election rules. You **MUST** respond to the AEC about the issues in the report (s 198).

Your response to the AEC must be in writing. It must include:

- whether the organisation intends to take action

- (if yes) what action the organisation intends to take

You must send your response to the AEC within **30 days** of receiving the report and also provide a copy to the ROC (s 198).



Penalties apply

The requirement to respond to the AEC comes from section 198 of the RO Act. Section 198 of the RO Act is a civil penalty provision.

A failure to take any of these steps, or taking them in the wrong order, can expose your organisation to penalties under the RO Act.

Make the report and your response available to your members

You must make the post-election report about difficult rules available to your members.

You must also make your written response to the AEC available to your members.



Timing is very important

You must make the report about difficult rules available to your members **before or at the same time** as you make your response available.

Your response must be available to members:

- in the next edition of your journal or
- within 30 days of giving it to the AEC (if using a method other than your journal to make it available, e.g. your website)



Penalties apply

The requirement to respond to the AEC comes from section 198 of the RO Act. Section 198 of the RO Act is a civil penalty provision.

A failure to take any of these steps, or taking them in the wrong order, can expose your organisation to penalties under the RO Act.

How do I make these documents available to my members?

The RO Act says you will have made the document available if you do all the following things:

- Publish a copy of the relevant section and your response in your next journal, AND
- Send the ROC a copy of the relevant section and your response with a declaration that you'll provide copies to any member who asks for one, AND
- Tell members in your next journal (or an appropriate newspaper) that you'll give the relevant section of the report and your response to any member free of charge if requested, AND
- Put on your website:
 - the relevant section of the report within 14 days of receiving it and
 - your response within 14 days of sending it to the AEC

But you can also make the documents available to your members in other ways as well.



What if we decide to change our rules?

You can! If you think changing your rules will fix or improve the issues raised by the AEC you can change your rules.

Your rules have a rule altering procedure that you must follow in order to do this.

For help changing your rules and advice on rule requirements, please contact the [Fair Work Commission](#). The ROC can provide advice and assistance on election-related issues but it does not change rules.

Questions?



What if I don't understand the post election report?

You should contact the AEC immediately to discuss what the report means.

What if we decide not to take action?

You must tell the AEC in writing you do not intend to act.

What if I have already responded to the AEC?

If you have already done the things set out in step 2, please disregard this step. Remember to make the relevant section of the report and your response available to your members as well.

If you have any queries we can be contacted on 1300 341 665 or by email at regorgs@roc.gov.au.

Yours sincerely

Registered Organisations Commission



The ROC has a [Compliance Policy](#) which explains how we respond to issues of non-compliance. The policy is available on our website if you would like further information on the steps the compliance team may take in response to non-lodgement of a financial report.

28 September 2022

Post-election report

Motor Traders' Association of New South Wales

Insufficient Nominations election
E2021/203

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Election(s) Covered in this Report

Organisation: Motor Traders' Association of New South Wales

Election: Insufficient Nominations

Election Decision No/s: E2021/203

Rules

Rules used for the election: [066N: Incorporates alterations of 22 December 2014 in matter number D2014/64]

Rules difficult to apply/interpret:

Rules 38 (5) and 39 (6) state that the candidate has the right to withdraw his candidature at any time before the returning officer finalises the ballot paper where a ballot for the respective position is required or before the declaration of the election if a ballot is not required. This rule is difficult to apply because:

- If there are no more nominations than positions and a ballot is not required, then it is unclear when or whether candidates can withdraw their nomination.
- the date of finalisation of the ballot paper is not known when the notice of nominations is sent and therefore candidates do not have certainty about the timeline for withdrawal
- late notice of withdrawal may prevent the Returning Officer from opening the ballot on time.

It is recommended that the Association specify a period for withdrawal, for example, 7 days after close of nominations.

Model Rule reference (if any): Rule no.23 Withdrawal of Nominations

For more details see the Model Rules on the AEC website: www.aec.gov.au/ieb/

Other Matters

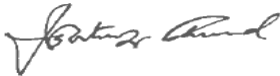
Returning Officer actions required (Section 193): Yes

Details:

1. Rule 39(8) of the Organisation states that the notice of the election inviting the nomination is to be delivered by hand or post. The Covid-19 Pandemic has affected the capacity of Australia Post to deliver mail by hand in a timely manner. To address this issue, the Returning Officer applied Section 193(1) (b) of the *Fair Work (Registered Organisation) Act 2009* and sent the election notice by email to the relevant electorate.
2. Rule 39.12 states that candidates be notified of defective nominations by telegram. This communication method is not feasible. The Returning Officer applied subparagraph 193(1) (b)(ii) of the *Fair Work (Registered Organisation) Act 2009* to remedy this and the notification of defective nominations were to be sent by email.
3. To address difficulties in the application of Rules 38 (5) and 39 (6), the Returning Officer applied subparagraph 193(1) (b)(ii) of the *Fair Work (Registered Organisation) Act 2009* to fix a closing

time for the withdrawal of the nomination. The withdrawal period was determined as being within two weeks from the date of the close of the nomination period.

Signed



Ishtiaq Ahmed
Returning Officer
Australian Electoral Commission
E: IEBevents@aec.gov.au
P: 02 9375 6331
28 September 2022

Attachments

- A. Declaration of results for Uncontested Offices – Stage 1- NSW
- B. Declaration of Results for Contested Offices – Stage 1- NSW
- C. Declaration of Results for Contested Offices – Stage 2- NSW



6 September 2022

Stavros Yallouridis
CEO
Motor Traders' Association of New South Wales
Sent via email: stavros.yallouridis@mtansw.com.au



IMMEDIATE ACTION REQUIRED:

You must take steps after your recent election E2021/203

Dear Stavros Yallouridis,

An election has recently been completed by the Australian Electoral Commission (**AEC**) for the Motor Traders' Association of New South Wales.

This letter explains the next steps you must take and what information you need to lodge with the Registered Organisations Commission (**ROC**).

What you must do right now

- Let your members know about the election report issued by the AEC
- Arrange financial training for officers newly elected to an office with financial management duties. (This includes all members of the committee of management).
- Complete the notification of change and email it to regorgs@roc.gov.au

This letter explains these steps and the tools available to help you.

STEP 1: Notify members

You must put a notice on your website once you receive your post-election report. It must tell your members they can request a copy of the post-election report from you or the AEC (r. 141). The notice must be on your website for at least 3 months.



Can I put more information on our website?

Yes! Being transparent is part of good governance. You can publish the whole report or the declaration of results, as well as your notice and leave them up longer than 3 months. You can always do more than the regulatory minimum.

The ROC will also publish your declaration of results on our [website](https://www.roc.gov.au).

STEP 2: Financial training

You may have to arrange financial training for people elected to new roles.

All officers with financial management duties must complete financial training (s 293K). For information on when officers must redo training and hints on when to book training for officers taking up multiple offices [please see our fact sheet](#).

There are face to face and online [financial training packages on the ROC website](#).

You must act on this now, as affected officers **MUST** complete approved financial training OR been granted an [exemption by the ROC](#) **within 6 months** of beginning to hold office.



Good governance tip:

Organisations should instruct officer holders about their other obligations. This is especially important for committee of management members.

Our podcast covers the [benefits of officer induction](#). Officers have responsibilities under the rules, the RO Act, and disclosure requirements around conflicts of interest, remuneration and material personal interests. Officers will benefit from our [officer induction kit](#) and our [podcast, such as episode 17 - conflicts of interest](#).

STEP 3: Notifications of change

A notification of change must be lodged with the ROC within **35 days** of the change occurring.



We have a [template](#) to help you with this, which you can send to regorgs@roc.gov.au. An officer must sign the completed notification template.

You must lodge a notification of change if:

- any of your officers have not been re-elected;
- officers have changed offices; or
- you have new officers.

Only notify us of changes that have **already occurred**. If people take up office in the future, you must wait until the change happens before lodging the notification within 35 days of the change.

Note: One election may result in many notifications of change.



Penalties apply

Failing to lodge your notifications of change on time can expose your organisation and its officers to significant penalties.

ROC v CEPU

The organisation failed to make a series of notifications of change on time.

The Full Court said 'The record-keeping obligations imposed under the Registered Organisations Act are treated by the legislature as important and serious, and contravention of those obligations are correspondingly serious.'

The organisation was ordered to pay a penalty. More information is available in our [case summary](#).

Questions?



Why do I need to tell you the results of the election when you've already received them?

The RO Act requires that **you** tell us this information about your officers – it is a legal obligation. The notification of change also contains information that is not in the declaration of results.

What if the officer has already done training?

Check out our [fact sheet](#) for when officers need to redo training, when they can get an exemption and when further training isn't required.

If you have any queries we can be contacted on 1300 341 665 or by email at regorgs@roc.gov.au.

Yours sincerely

Registered Organisations Commission



The ROC has a [Compliance Policy](#) which explains how we respond to issues of non-compliance. The policy is available on our website if you would like further information on the steps the compliance team may take in response to non-lodgement of a financial report.

Motor Traders' Association of New South Wales
DECLARATION OF RESULTS - E2021/203 - Stage 2
Contested Offices

Insufficient Nominations Election

The results of the election for the following offices conducted in accordance with the provisions of the *Fair Work (Registered Organisations) Act 2009* and the rules of the organisation are:

VOTING MATERIAL ISSUED	
Total number of people on the roll of voters (a)	37
Number of voters issued with voting material	37
Total number of voters issued with replacement voting material	1
Total number of voting material packs issued	38
VOTING MATERIAL RETURNED	
Total number of envelopes returned for scrutiny by closing date of ballot (b)	28
Number of declaration envelopes rejected at preliminary scrutiny (minus)	1
Number of ballot papers returned outside declaration envelopes (minus)	0
COUNT	
Total ballot papers admitted to the count	27
LATE OR UNRETURNED VOTING MATERIAL	
Voting material returned as unclaimed mail by closing date of ballot	0
Voting material packs not returned by voters by closing date of the ballot	9
Percentage of voting material packs returned by voters to number of people on the roll of voters (b/a)	75.67 %

Metropolitan Vice President (1)

<u>Candidates</u>	<u>Final Votes</u>
COWAN, Brian	11
CARLSON, Adrian	16

Total ballot papers admitted for this office	27
Formal Ballot papers	27
Informal Ballot papers	0

I declare the following elected:

- CARLSON, Adrian

Ishtiaq Ahmed
Returning Officer
Telephone: 02 9375 6331
Email: IEBevents@aec.gov.au
06/09/2022

Motor Traders' Association of New South Wales

DECLARATION OF RESULTS - E2021/203 - Stage 1

Uncontested Offices

Insufficient Nominations Election

The results of the election for the following offices conducted in accordance with the provisions of the *Fair Work (Registered Organisations) Act 2009* and the rules of the organisation are:

Trade Division - Australian Automobile Dealers Association Metropolitan Division

Councillor (1)

Candidates

No Nominations Received

Alternate Councillor (1)

Candidates

No Nominations Received

Trade Division - Australian Automobile Dealers Association North and North West Division

Alternate Councillor (1)

Candidates

No Nominations Received

Trade Division - Australian Automobile Dealers Association South and South West Division

Councillor (1)

Candidates

No Nominations Received

Alternate Councillor (1)

Candidates

No Nominations Received

Trade Division - Australian Heavy Vehicle Repairers Association

Alternate Councillor (1)

Candidates

No Nominations Received

Trade Division - Auto Dismantlers Division

Councillor (1)

Candidates

No Nominations Received

Alternate Councillor (1)

Candidates

No Nominations Received

Trade Division - Automotive and Marine Trimmers Division

Councillor (1)

Candidates

No Nominations Received

Alternate Councillor (1)

Candidates

No Nominations Received

Trade Division - Automotive Electrical Specialists Division

Alternate Councillor (1)

Candidates

No Nominations Received

Trade Division - Automotive Mechanical Repair Division

Councillor (2)

Candidates

No Nominations Received

Alternate Councillor (6)

Candidates

No Nominations Received

Trade Division - Automotive Transmission and Rebuilders Division

Alternate Councillor (1)

Candidates

No Nominations Received

Trade Division - Body Repair Division

Alternate Councillor (2)

Candidates

BYRN Keith

KILLEN Michael Paul

Trade Division - Brake Repair Specialist Division

Councillor (1)

Candidates

No Nominations Received

Alternate Councillor (1)

Candidates

No Nominations Received

Trade Division - Caravan Industry Division

Alternate Councillor (1)

Candidates

No Nominations Received

Trade Division - Commercial Vehicle Industry Association of NSW Division

Alternate Councillor (1)

Candidates

No Nominations Received

Trade Division - Engine Reconditioners Association of NSW Division

Councillor (1)

Candidates

No Nominations Received

Alternate Councillor (1)

Candidates

No Nominations Received

Trade Division - Exhaust System Specialist Division

Councillor (1)

Candidates

No Nominations Received

Alternate Councillor (1)

Candidates

No Nominations Received

Trade Division - Farm Machinery Dealers Association Division

Alternate Councillor (1)

Candidates

No Nominations Received

Trade Division - General Trades Division

Alternate Councillor (1)

Candidates

BEEKMAN Ray

Trade Division - Hire Car and Chauffeur Driven Limousines Division

Councillor (1)

Candidates

No Nominations Received

Alternate Councillor (1)

Candidates

No Nominations Received

Trade Division - Licensed Used Car Dealers Division

Alternate Councillor (1)

Candidates

No Nominations Received

Trade Division - Motor Cycle Industry Association of NSW Division

Alternate Councillor (1)

Candidates

No Nominations Received

Trade Division - Motor Vehicle Assessor and Inspector Division

Councillor (1)

Candidates

No Nominations Received

Alternate Councillor (1)

Candidates

No Nominations Received

Trade Division - Parts and Accessories Division

Alternate Councillor (1)

Candidates

No Nominations Received

Trade Division - Radiator Repair Specialist Division

Councillor (1)

Candidates

No Nominations Received

Alternate Councillor (1)

Candidates

No Nominations Received

Trade Division - Rental Vehicle Division

Councillor (1)

Candidates

No Nominations Received

Alternate Councillor (1)

Candidates

No Nominations Received

Trade Division - Rustproofing Specialists Division

Councillor (1)

Candidates

No Nominations Received

Alternate Councillor (1)

Candidates

No Nominations Received

Trade Division - Service Station Division

Councillor (1)

Candidates

No Nominations Received

Alternate Councillor (1)

Candidates

No Nominations Received

Trade Division - Steering and Suspension Specialists Division

Alternate Councillor (1)

Candidates

No Nominations Received

Trade Division - Tow-Truck Operators Division

Alternate Councillor (1)

Candidates

No Nominations Received

Trade Division - Tyre Dealers & Retreaders Association of NSW Division

Councillor (1)

Candidates

No Nominations Received

Alternate Councillor (2)

Candidates

No Nominations Received

District Division - Australian Capital Territory Division

Alternate Councillor (1)

Candidates

No Nominations Received

District Division - Central Coast District Division

Councillor (1)

Candidates

MCINTYRE Scott Norton

Alternate Councillor (1)

Candidates

No Nominations Received

District Division - Central West District Division

Councillor (2)

Candidates

No Nominations Received

Alternate Councillor (2)

Candidates

No Nominations Received

District Division - Clarence/Coffs Harbour District Division

Alternate Councillor (1)

Candidates

No Nominations Received

District Division - Gwydir/North West District Division

Councillor (1)

Candidates

No Nominations Received

Alternate Councillor (1)

Candidates

No Nominations Received

District Division - Illawarra District Division

Councillor (1)

Candidates

No Nominations Received

Alternate Councillor (1)

Candidates

No Nominations Received

District Division - Kempsey/Manning/Port Macquarie District Division

Alternate Councillor (1)

Candidates

PRUSSING Adam

District Division - Metropolitan District Division

Alternate Councillor (7)

Candidates

NIKITARAS Anthony

District Division - Newcastle and Hunter District Division

Councillor (1)

Candidates

WEST-SOOBY Stephen

Alternate Councillor (2)

Candidates

No Nominations Received

District Division - North and New England District Division

Alternate Councillor (1)

Candidates

PRUSSING Adam

District Division - Richmond and Tweed District Division

Councillor (2)

Candidates

WEBB Ken

Alternate Councillor (2)

Candidates

No Nominations Received

District Division - Shoalhaven District Division

Councillor (1)

Candidates

No Nominations Received

Alternate Councillor (1)

Candidates

No Nominations Received

District Division - South Coast District Division

Councillor (1)

Candidates

No Nominations Received

Alternate Councillor (1)

Candidates

No Nominations Received

District Division - South District Division

Alternate Councillor (1)

Candidates

No Nominations Received

District Division - South West District Division

Councillor (1)

Candidates

No Nominations Received

Alternate Councillor (2)

Candidates

No Nominations Received

District Division - West District Division

Councillor (1)

Candidates

No Nominations Received

Alternate Councillor (1)

Candidates

No Nominations Received

As the number of nominations accepted did not exceed the number of positions to be filled, I declare the above candidates elected.

Ishtiaq Ahmed
Returning Officer
Telephone: 02 9375 6331
Email: IEBevents@aec.gov.au
12/05/2022

Motor Traders' Association of New South Wales
DECLARATION OF RESULTS - E2021/203 - Stage 1
Contested Offices

Insufficient Nominations Election

The results of the election for the following offices conducted in accordance with the provisions of the *Fair Work (Registered Organisations) Act 2009* and the rules of the organisation are:

Trade Division: Body Repair Division

VOTING MATERIAL ISSUED	
Total number of people on the roll of voters (a)	269
Number of voters issued with voting material	269
Total number of voters issued with replacement voting material	0
Total number of voting material packs issued	269
VOTING MATERIAL RETURNED	
Total number of envelopes returned for scrutiny by closing date of ballot (b)	30
Number of declaration envelopes rejected at preliminary scrutiny (minus)	1
Number of ballot papers returned outside declaration envelopes (minus)	4
COUNT	
Total ballot papers admitted to the count	25
LATE OR UNRETURNED VOTING MATERIAL	
Voting material returned as unclaimed mail by closing date of ballot	1
Voting material packs not returned by voters by closing date of the ballot	238
Percentage of voting material packs returned by voters to number of people on the roll of voters (b/a)	11 %

Councillor (1)

<u>Candidates</u>	<u>Final Votes</u>
MCINTYRE, Scott Norton	8
BYRN, Keith	7
KILLEN, Michael Paul	10

Total ballot papers admitted for this office	25
Formal Ballot papers	25
Informal Ballot papers	0

I declare the following elected:

- KILLEN, Michael Paul

District Division: Metropolitan District Division

VOTING MATERIAL ISSUED	
Total number of people on the roll of voters (a)	1,030
Number of voters issued with voting material	1,030
Total number of voters issued with replacement voting material	0
Total number of voting material packs issued	1,030
VOTING MATERIAL RETURNED	
Total number of envelopes returned for scrutiny by closing date of ballot (b)	92
Number of declaration envelopes rejected at preliminary scrutiny (minus)	1
Number of ballot papers returned outside declaration envelopes (minus)	3
COUNT	
Total ballot papers admitted to the count	88
LATE OR UNRETURNED VOTING MATERIAL	
Voting material returned as unclaimed mail by closing date of ballot	12
Voting material packs not returned by voters by closing date of the ballot	926
Percentage of voting material packs returned by voters to number of people on the roll of voters (b/a)	9 %

Councillor (1)

<u>Candidates</u>	<u>Final Votes</u>
NIKITARAS, Anthony	21
BEEKMAN, Ray	32
BYRN, Keith	33

Total ballot papers admitted for this office	88
Formal Ballot papers	86
Informal Ballot papers	2

I declare the following elected:

- BYRN, Keith

District Division: North and New England District Division

VOTING MATERIAL ISSUED	
Total number of people on the roll of voters (a)	83
Number of voters issued with voting material	83
Total number of voters issued with replacement voting material	0
Total number of voting material packs issued	83

VOTING MATERIAL RETURNED	
Total number of envelopes returned for scrutiny by closing date of ballot (b)	14
Number of declaration envelopes rejected at preliminary scrutiny (minus)	0
Number of ballot papers returned outside declaration envelopes (minus)	0
COUNT	
Total ballot papers admitted to the count	14
LATE OR UNRETURNED VOTING MATERIAL	
Voting material returned as unclaimed mail by closing date of ballot	1
Voting material packs not returned by voters by closing date of the ballot	68
Percentage of voting material packs returned by voters to number of people on the roll of voters (b/a)	17 %

Councillor (1)

<u>Candidates</u>	<u>Final Votes</u>
KILLEN, Michael Paul	11
PRUSSING, Adam	2

Total ballot papers admitted for this office	14
Formal Ballot papers	13
Informal Ballot papers	1

I declare the following elected:

- KILLEN, Michael Paul

Ishtiaq Ahmed
Returning Officer
Telephone: 02 9375 6331
Email: IEBevents@aec.gov.au
12/05/2022



DECISION

Fair Work (Registered Organisations) Act 2009
s.189—Arrangement for conduct of an election

Motor Traders' Association of New South Wales (E2021/203)

MR STEENSON

SYDNEY, 4 JANUARY 2022

Arrangement for conduct of election.

[1] On 9 November 2021 the Motor Traders' Association of New South Wales (MTANSW) lodged with the Registered Organisations Commission (ROC) prescribed information for an election to fill the offices set out in **Attachment A**.

Background

[2] The majority of offices requested in this election (**E2021/203**) are a result of insufficient nominations in scheduled election E2020/215. Some offices are vacant due to the apparent operation of rule 38(5) of the MTANSW rules, which provides:

A candidate for election as a Councillor may self nominate or be nominated by a member of the Division or a nominated representative of a member of the Division or by an affiliate member of the affiliate or a nominated representative of an affiliate member of the affiliate he proposes to represent on the Council provided that the candidate also has the right to withdraw his candidature at any time before the returning officer finalises the ballot paper where a ballot for the respective position is required or before the declaration of the election if a ballot is not required. A candidate for election as the Secretary may be nominated only by a member, affiliate member, life member who is entitled to vote at the election or a nominated representative. A candidate may be nominated or may self nominate for the position as Councillor in as many divisions (trade or area) as entitlement permits, but may accept only one councillorship. In the event that a candidate is elected as a councillor in more than one division it is the choice of the candidate as to which councillorship is accepted.

(Underlining added)

[3] On 14 December 2021, the ROC sought clarification from MTANSW regarding the application of rule 38(5) and how it interacts with rules 29(2)(g) and 29(6) which appear to be in contradiction. Rules 29(2)(g) and 29(6) are as follows:

Any one individual may be elected as a member of the Council by more than one Division of the affiliate members of an affiliate and may represent more than one Division or affiliate on the council at the one time.¹

...

¹ Rule 29(2)(g)

Provided always that if a Councillor has been elected to the Council by more than one Division or affiliate, his office shall become vacant only as a representative of the Division or affiliate of which he has ceased to be a member or the nominated representative of a member or an affiliate member as the case may be.²

[4] On 17 December 2021, MTANSW provided submissions regarding the interpretation of the rules and how they have apparently operated in practice. These submissions are summarised below.

Distinction between Councillors elected by Divisions and Councillors elected by affiliate members

[5] The submissions made by MTANSW first noted that the rules make a distinction between Councillors elected by Divisions and Councillors elected by affiliate members. They advised that ‘Division’ is defined in rule 2(aa) as meaning one of the Divisions pursuant to rule 11. Under rule 11(2), a Division consists of only members of the Association. The reference throughout the rules to ‘members of the Association’ is a reference to the category of membership of the MTANSW set out in rule 6(3)1(a). MTANSW submitted that this is distinguishable from references to ‘Association members’, such as in rule 6, which are intended to refer to each of the categories of membership set out in rule 6(3)1. Therefore, ‘affiliate member’ (being the class of Association members set out in rule 6(3)1(b)) are apparently not allocated to and do not appear to form part of any Divisions.

[6] Rule 38(1) further distinguishes between Councillors elected by Divisions and Councillors elected by affiliate members in paragraphs (a) and (b) as follows:

The following provisions will apply with respect to the election of:

- (a) Members of the Divisions of the Association as Councillors;
- (b) Affiliate members of affiliates as Councillors

[7] MTANSW submits that any ambiguity in the rules created by reference to Councillors being elected by or representing “more than one Division or affiliate” should be construed to mean Councillors may be elected by or represent “one or more affiliates in addition to one Division”.

Eligibility to be elected as Councillor by a Division

[8] The rules of MTANSW set out eligibility requirements for candidates in various clauses, including the second last sentence of rule 38(5) which states that “A candidate may be nominated or may self nominate for the position as Councillor in as many divisions (trade or area) as entitlement permits, but may only accept one councillorship”.

[9] While the rules do not define the term ‘councillorship’, rule 38(5) then goes on to state that “in the event that a candidate is elected as a councillor in more than one division it is the choice of the candidate as to which councillorship is accepted”. This makes it clear that the restriction to ‘one councillorship’ means that a person may not be elected as a Councillor to more than one Division.

[10] The MTANSW submission is that the restriction on a candidate only being elected as Councillor to one Division does not apply to candidates who are nominated for election as Councillors by affiliate members, nor restrict a Councillor from being elected by one Division and by one or more affiliate members.

² Rule 29(6)

Interaction between rules 29(2)(g), 29(6) and 38(5)

[11] MTANSW submits that when considering the wording of rule 29(2)(g), specifically the words “may represent one Division”, one must look at these in the context of rule 29(2)(g) and 29(2) as a whole. It is submitted that rule 29(2)(g) relates to the election to the Governing Council as a representative of an Affiliate, in contrast to rules 29(2)(a) – (c) which relate to election to the Governing Council on behalf of the members of a Division.

[12] MTANSW further submits that when viewing the words “by more than one Division” in rule 29(6) in the context of the whole rule, that the preferred interpretation is a reference to a person being able to be elected as both a Councillor (on behalf of only one Division) in addition to being elected by one or more affiliate members.

[13] The organisation’s submission concludes that the operation of rules 29(2)(g) and 29(6) can be consistent with Rule 38(5), and therefore the rules do not permit an individual to be elected as Councillor by more than one Division.

Application of the rules in relation to this election decision

[14] For the purpose of facilitating the election currently sought in this matter – an election to fill a significant number of vacancies on the MTANSW Governing Council – I am prepared, for that purpose, to accept the organisation’s submissions in relation to the rules relating to offices of Councillor.

[15] However, given the issues identified with the wording of the current rules, it is the Commission’s expectation that MTANSW will review the relevant rules, with a view to transacting any alterations necessary to make the rules clearer on their face.

[16] In addition, the organisation should consider whether it wishes to put in place a mechanism that may reduce the need for a large number of supplementary elections following the scheduled election. For example, it is open to the organisation to alter its rules to allow another nominee (e.g. the person with the second highest number of votes) to be declared elected to office if the person with the highest number of votes has chosen to take up another office. Such a rule would likely remove the need for the organisation to hold a supplementary election for those offices to which it applies.

[17] The Commission will follow up with the organisation separately in relation to these election-related rules issues, with a view to ensuring that they are considered, and any issues addressed, prior to the next scheduled election for the Governing Council.

Casual vacancy described as insufficient nomination

[18] On 23 November 2021 the organisation informed the Commission that one of the vacancies listed in the prescribed information – for the office of Councillor of the Rustproofing Specialists Division – was due to casual vacancy, as the office-holder had vacated the office following cessation of business. The prescribed information submitted on 9 November 2021 describes all requested elections as being due to insufficient nominations in the previous election or the operation of rule 38(5). The information provided on 23 November makes it clear that this is not the case in relation to the Rustproofing Specialists Division. For the purposes of arranging for the elections for office sought in this matter, I accept the organisation’s assurance that this particular office is vacant due to casual vacancy.

[19] I am satisfied that an election for the offices outlined in **Attachment A** is required to be held under the rules of the organisation and, under subsection 189(3) of the *Fair Work (Registered Organisations) Act 2009*, I am making arrangements for the conduct of the election by the Australian Electoral Commission.



DELEGATE OF THE COMMISSIONER

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ATTACHMENT A

Executive Board

Metropolitan Vice President (1)

Governing Council

Councillors (to be elected from the following Divisions)

Trade Divisions

Australian Automobile Dealers Association Metropolitan Division	(1)
Australian Automobile Dealers Association South and South West Division	(1)
Auto Dismantlers Division	(1)
Automotive and Marine Trimmers Division	(1)
Automotive Mechanical Repair Division	(2)
Body Repair Division	(1)
Brake Repair Specialist Division	(1)
Engine Reconditioners Association of NSW Division	(1)
Exhaust System Specialist Division	(1)
Hire Car and Chauffeur Driven Limousines Division	(1)
Motor Vehicle Assessor and Inspector Division	(1)
Radiator Repair Specialists Division	(1)
Rental Vehicle Division	(1)
Rustproofing Specialists Division	(1)
Service Station Division	(1)
Tyre Dealers and Retreaders Association of NSW Division	(1)

District Divisions

Central Coast District Division	(1)
Central West District Division	(2)
Gwydir/North West District Division	(1)
Illawarra District Division	(1)
Metropolitan District Division	(1)
Newcastle and Hunter District Division	(1)
North and New England District Division	(1)
Richmond and Tweed District Division	(2)
Shoalhaven District Division	(1)
South Coast District Division	(1)
South West District Division	(1)
West District Division	(1)

Alternate Councillors (to be elected from the following Divisions)

Trade Divisions

Australian Automobile Dealers Association Metropolitan Division	(1)
Australian Automobile Dealers Association North and North West Division	(1)

Australian Automobile Dealers Association South and South West Division	(1)
Australian Heavy Vehicle Repairers Association	(1)
Auto Dismantlers Division	(1)
Automotive and Marine Trimmers Division	(1)
Automotive Electrical Specialists Division	(1)
Automotive Mechanical Repair Division	(6)
Automotive Transmission and Rebuilders Division	(1)
Body Repair Division	(2)
Brake Repair Specialist Division	(1)
Caravan Industry Division	(1)
Commercial Vehicle Industry Association of NSW Division	(1)
Engine Reconditioners Association of NSW Division	(1)
Exhaust System Specialist Division	(1)
Farm Machinery Dealers Association Division	(1)
General Trades Division	(1)
Hire Car and Chauffeur Driven Limousines Division	(1)
Licensed Used Car Dealers Division	(1)
Motor Cycle Industry Association of NSW Division	(1)
Motor Vehicle Assessor and Inspector Division	(1)
Parts and Accessories Division	(1)
Radiator Repair Specialists Division	(1)
Rental Vehicle Division	(1)
Rustproofing Specialists Division	(1)
Service Station Division	(1)
Steering and Suspension Specialists Division	(1)
Tow-Truck Operators Division	(1)
Tyre Dealers and Retreaders Association of NSW Division	(2)

District Divisions

Australian Capital Territory Division	(1)
Central Coast District Division	(1)
Central West District Division	(2)
Clarence/Coffs Harbour District Division	(1)
Gwydir/North West District Division	(1)
Illawarra District Division	(1)
Kempsey/Manning/Port Macquarie District Division	(1)
Metropolitan District Division	(7)
Newcastle and Hunter District Division	(2)
North and New England District Division	(1)
Richmond and Tweed District Division	(2)
Shoalhaven District Division	(1)
South Coast District Division	(1)
South District Division	(1)
South West District Division	(2)
West District Division	(1)



PRESCRIBED INFORMATION FOR ELECTIONS in accordance with Section 189 *Fair Work (Registered Organisations) Act 2009* and Regulation 138 *Fair Work (Registered Organisations) Regulations 2009*

I, David Keats, being a Governing Councillor of the Motor Traders' Association of New South Wales make the following statement:

1. I am a Governing Councillor of the Motor Traders' Association of New South Wales. I am authorised to sign this statement containing prescribed information concerning the forthcoming elections of the Motor Traders' Association of New South Wales.
2. I confirm that the following information is being lodged under subsection 189(1) of the Fair Work (Registered Organisations) Act 2009 (the RO Act).
3. The terms of the below mentioned offices of the organisation are scheduled to expire in the normal course of event under the Rules of the organisation.

The following information for the election is provided:

a) The offices to be elected are:

- (i) Division Councillors [numbers to be determined in accordance with the rules] - **Rule 29**;
- (ii) Division Alternate Councillors [numbers to be determined in accordance with the rules] - **Rule 29**;
- (iii) Office Bearers One (1) Metropolitan Vice President - **Rule 30**;

b) The election is necessary as vacancies have occurred in Governing Councillor and Alternate Councillor Offices due to

- (i) Insufficient nominations in Trade and District Divisions arising out of the Stage 1 elections; and
- (ii) Election by Governing Councillors under **Rule 38(5)** of the Rules to accept one councillorship

c) The Association's Rules set out the election process for the positions as follows:

- Councillors and Alternate Councillors are elected from members of each respective Division of the Association as set out in **Rule 38**.
- Executive Board members are elected from Councillors elect as set out in **Rule 39**.

When nomination opening time is declared MTA will be able to provide details of the numbers of members in each Division.

Rule 11 sets out the Trade and District Divisions of the Association to which the election will apply.

Councillors [and Alternate Councillors] to be elected from the following Trade and District Divisions as per the attached Schedule:

Trade Divisions:

- (i) Australian Automobile Dealers Association Metropolitan Division;
- (ii) Australian Automobile Dealers Association North and North West Division;
- (iii) Australian Automobile Dealers Association South and South West Division;
- (iv) Australian Heavy Vehicle Repairers Association;
- (v) Auto Dismantlers Division;
- (vi) Automotive and Marine Trimmers Division;

- (vii) Automotive Electrical Specialists Division;
- (viii) Automotive Mechanical Repair Division;
- (ix) Automotive Transmission and Rebuilders Division;
- (x) Body Repair Division;
- (xi) Brake Repair Specialist Division;
- (xii) Caravan Industry Division;
- (xiii) Commercial Vehicle Industry Association of NSW Division;
- (xiv) Engine Reconditioners Association of NSW Division;
- (xv) Exhaust System Specialist Division;
- (xvi) Farm Machinery Dealers Association Division;
- (xvii) General Trades Division;
- (xviii) Hire Car and Chauffeur Driven Limousines Division;
- (xix) Licensed Used Car Dealers Division;
- (xx) Motor Bus Division;
- (xxi) Motor Cycle Industry Association of NSW Division;
- (xxii) Motor Vehicle Assessor and Inspector Division;
- (xxiii) Parts and Accessories Division;
- (xxiv) Radiator Repair Specialists Division;
- (xxv) Rental Vehicle Division;
- (xxvi) Rustproofing Specialists Division;
- (xxvii) Service Station Division;
- (xxviii) Steering and Suspension Specialists Division;
- (xxix) Tow-Truck Operators Division;
- (xxx) Tyre Dealers and Retreaders Association of NSW Division;

District Divisions:

- (i) Australian Capital Territory Division;
- (ii) Central Coast District Division;
- (iii) Central West District Division;
- (iv) Clarence/Coffs Harbour District Division;
- (v) Gwydir/North West District Division;
- (vi) Illawarra District Division;
- (vii) Kempsey/Manning/Port Macquarie District Division;
- (viii) Metropolitan District Division;
- (ix) Newcastle and Hunter District Division;
- (x) North and New England District Division;
- (xi) Richmond and Tweed District Division;
- (xii) Shoalhaven District Division;
- (xiii) South Coast District Division;
- (xiv) South District Division;
- (xv) South West District Division;
- (xvi) West District Division.

The Executive Board offices as set out in Rule 33(1) are as follows:

- One President,
- Four Metropolitan Vice Presidents,
- Four Country Vice Presidents,
- One Honorary Treasurer.

The Executive Board is elected from the Councillors elect as set out in Rule 39. Only one (1) position of Metropolitan Vice President is required to be filled.

d) Rule 38(7) provides that the roll of voters is to close seven (7) days before the date of commencement of the period for lodging nominations. Although there is no particular date or time set in the Rules of the Association for the commencement or close of a period for the receipt of nominations, MTA historically has opened the electoral process by printing a nomination form for the positions of Councillors and Alternate Councillors in the MTA Journal [see Rules 38(8) and 38(9)].

e) The voting system:

- The Councillors, Alternate Councillors and Secretary is the first stage of a collegiate voting system;
- The Metropolitan Vice President is the second stage of a collegiate voting system.

4. This statement **IS** lodged at least 2 months before nominations open for the election below.

Signed:

A handwritten signature in black ink, appearing to be 'D. Keats', with a stylized flourish at the end.

David Keats (Governing Councillor)

Dated: 9 November, 2021